IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5886 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAKESHKUMAR RAJANIKANT KAMDAR

Versus

V.C. TRIVEDI OR HIS SUCCESSOR IN THE OFFICE

Appearance:

1. Special Civil Application No. 5886 of 2001

MR PS CHAMPANERI for Petitioner No. 1

MR K.T.DAVE, AGP for Respondent No. 1-3

MS P.J.DAVAWALA, for Respondent No. 4

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 27/09/2001

ORAL JUDGEMENT

By means of filing this petition under Article 226 of the Constitution of India, the petitioner/detenue who has been detained by the District Magistrate,

Surendranagar vide order dated June 4, 2001 (Annexure-A to the petition) in exercise of the powers conferred under sub-Section 2 of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 ('the P.B.M. Act' for short hereinafter), has challenged the said order and prayed to issue a writ of habeas corpus or any other writ, order or direction quashing and setting aside the order of detention and set him at liberty forthwith.

2. The averments made in the petition and the grounds of detention manifest that the petitioner is an Accountant in a fare price shop run by Rameshbhai Arjanbhai who is a licence holder of the said shop at village Dharadungari, Taluka Sayla, District Surendranagar. On May 25, 2001, Chief Supply Inspector inspected one Matador bearing registration No. GJ-13-6956 which was driven by Manubhai Raialmalbhai Chavada and during inspection, from the said Matador 80 gunny bags containing wheat weighing 4000 kgs costing Rs.40,000/- was found and on interrogation of the said driver it was revealed that the said bags were being transported from the shop in which the petitioner is working as an Accountant. Therefore, on the next date, Chief Supply Inspector seized the entire record of the petitioner's shop and made an inquiry from ration card holders. During inquiry of the ration card holders it revealed that petitioner was supplying the essential commodities like, rice, wheat and kerosene to the card holders. Therefore, according to the detaining authority the petitioner was carrying the activities in a manner prejudicial to the maintenance of supply of commodities essential to the community and public at large and therefore, the authority found it necessary to detain him on the grounds stated in the impugned order.

3. Though the petitioner has challenged the order of detention on various grounds, Mr.P.S.Champaneri, learned advocate for the petitioner has restricted his arguments to the fact that non-supply of the documents pari passu which have been relied upon by the detaining authority though demanded, itself vitiate the order of detention and the continued detention of the petitioner has become illegal because his right to make an effective representation as enshrined in Article 22(5) of the Constitution has been infringed. To buttress the aforesaid submission he drew attention of this Court to Annexure-D which is the representation dated July 18, 2001 made by the petitioner/detenu to the District Magistrate, Surendranagar wherein he has categorically demanded two documents which have been referred to in the

impugned order of detention by the detaining authority. Those documents are relating to action taken by the detaining authority against the petitioner on two occasions. On one occasion petitioner was ordered to pay fine of Rs. 400/- and on second occasion censure was given to him. He, therefore, urged to allow this petition by quashing and setting aside the impugned order of detention dated June 4, 2001 and setting the petitioner at liberty forthwith.

4. Mr. K.T.Dave, learned AGP has appeared for respondents Nos. 1, 2 & 3 and opposed the petition by filing the affidavit in reply sworn by P.G.Vyas, Deputy Secretary to the Government, Food, Civil Supplies & Consumer Affairs Department, Sachivalaya, Gandhinagar. Ms P.J.Davawala, learned counsel has appeared for respondent No. 4, Union of India, and contested the petition by filing affidavit in reply sworn by S.L.Meena, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi.

5. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition and the documents annexed therewith and also considered the affidavit in reply filed by the contesting respondents and the impugned order - Annexure-A.

6. On having perusal of the impugned orders, there is no manner of doubt that the detaining authority in para 7 of its order dated June 4, 2001 has stated that for the irregularities and illegalities carried out by the petitioner at his shop, Mamlatdar, Sayla has taken departmental action against him twice. On one occasion petitioner was ordered to pay fine of Rs. 400/- whereas on second occasion petitioner was given censure. Therefore, there is a reason that the detaining authority has considered the said aspects while passing the impugned order against the petitioner. It is also true that the petitioner made a representation dated July 18, 2001 to the District Magistrate, Suremdranagar which is at page No. 25 of the compilation and, at page No. 28 he has requested to supply those two documents which have been referred to by the detaining authority at para 7 of the impugned order. It is also an admitted fact that the documents demanded by the petitioner are not supplied to him so far. Affidavit filed P.G.Vyas, Deputy Secretary to the Government of Gujarat is also silent on this point. Therefore, there is a reason to believe that documents demanded by the petitioner are not supplied to

him so far. Therefore, it can be said that important and relevant documents referred to in the detention order by the detaining authority though demanded by the petitioner have not been supplied to him and therefore, continued detention is required to be held to be illegal as it has prejudiced the right of the petitioner to make an effective representation and therefore the fundamental right as enshrined in Article 22(5) of the Constitution has been infringed.

7. A similar question arose before the Supreme Court in the case of MOHD. ZAKIR V. DELHI ADMINISTRATION AND OTHERS - 1982 SC 696. In the said case it has been observed that it is the constitutional mandate which requires detaining authority to give the documents relied on or referred to in the order of detention pari passu the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with. It is manifest that the question of demanding the documents is wholly irrelevant. The infirmity in this regard is violative of constitutional safeguard enshrined in Article 22(5) of the Constitution.

8. Applying the principle laid down by the Supreme Court in the case of Mohd. Zakir's case (supra) to the facts of the present case, it is clear that the present case is identical to the case referred to above. In the present case also at the cost of repetition be it stated that the documents which have been referred to by the detaining authority in the impugned order have not been supplied to the detenu though demanded which has seriously prejudiced the right of the petitioner to make an effective representation, therefore continued detention is held to be illegal and, on this ground petition deserves to be allowed by quashing and setting aside the impugned order of detention dated June 4, 2001 and setting the petitioner at liberty forthwith.

9. For the foregoing reasons, petition succeeds and is accordingly allowed. The impugned order of detention dated June 4, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*